

1 STEPHEN YAGMAN (SBN 69737)
2 filing@yagmanlaw.net
3 (for filings only)
4 YAGMAN + REICHMANN, LLP
333 Washington Boulevard
Venice Beach, California 90292-5152
(310)452-3200

5 Presented on behalf of Plaintiff and
6 Class Representative D. JACOBS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

11 **PEOPLE OF CITY OF LOS**
12 **ANGELES WHO ARE UN-HOUSED,**
13 **AS A CLASS REPRESENTED BY D.**
14 **JACOBS**, as representative of a class of
unhoused persons who reside and resided
in the streets and on the sidewalks of the
City of Los Angeles,

15 Plaintiff,

16

17 KAREN BASS, *et al,*
18 Defendants.

12:24-CV-09320-DOC-MAAx

**NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
ISSUES OF EXCESSIVE FORCE
AND OF MALICIOUS
PROSECUTION, MEMORANDUM
OF POINTS AND AUTHORITIES
AND DECLARATION OF
PLAINTIFF, DAVID JACOBS, IN
SUPPORT THEREOF;
STATEMENT OF
UNCONTROVERTED FACTS
FILED CONCURRENTLY**

June 2, 2025
8:30 a.m.
Courtroom 10A

Judge David O. Carter

23 PLEASE TAKE NOTICE that plaintiff moves for partial summary
24 judgment on the issued of excessive force and malicious prosecution, and that oral
25 argument will be heard as set forth above. This motion is based on the grounds
26 that (1) defendant LAPD officer Monique Contreras wielded her night stick
27 against plaintiff, David Jacobs, when there was no factual basis for her to do that,
28 and that it constituted a use of excessive force, and (2) Contreras initiated a

1 criminal charge against Jacobs, without probable cause and with malice, and that
2 charge was dismissed after Jacobs spent two months in jail, which damaged
3 Jacobs. The L.R. 7-3 meeting of counsel was held telephonically, on April 21,
4 2025, and the matters in issue were not resolved. Defense counsel stated that he
5 intended to cross-move for summary judgment.

6 **YAGMAN + REICHMANN, LLP**

7
8 By: /s/ Stephen Yagman
9 **STEPHEN YAGMAN**

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Attached hereto is the declaration of the plaintiff, David Jacobs, and it
3 evidences an inappropriate use of force against him, that was excessive and
4 unreasonable, as well as a malicious prosecution of him, both done by defendant,
5 Monique Contreras.

6 **THE FOURTH AMENDMENT EXCESSIVE FORCE CLAIM.**

7 The Fourth Amendment to the United States Constitution provides, in
8 pertinent part, that "The right of the people to be secure in their persons . . .
9 against unreasonable . . . seizures[] shall not be violated . . ." A use of excessive
10 force by police or jailors violates this provision of the Fourth Amendment, and
11 when police or jailors use excessive force, a plaintiff may recover damages under
12 42 U.S.C. § 1983. *Davidson v. O'Lone*, 752 F.2d 817, 827(3d Cir. 1984).
13 Application of force by police or prison guards exceeding that which is reasonable
14 and necessary under the circumstances states a claim under § 1983, *ibid.*, because
15 a citizen has the right to be free from unreasonable force. *Street v. Parham*, 929
16 F.2d 537, 540 (10th Cir. 1991); *Zuchel v. Spinharney*, 890 F.2d 273, 274 (10th
17 Cir. 1989).

18 A seizure of the person results in a constitutional violation if it is
19 unreasonable. *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443
20 (1989). Contreras' seizure of plaintiff by using her nightstick against him was an
21 unreasonable and did not meet the *Graham* standard. The determination of
22 unreasonableness requires that it be decided "whether the totality of the
23 circumstances justified a particular sort of . . . seizure," *Tennessee v. Garner*, 471
24 U.S. 1, 8–9, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). To resolve this question there
25 must be a balancing of "the nature and quality of the intrusion on the individual's
26 Fourth Amendment interests against the countervailing governmental interests at
27 stake." *Graham*, 490 U.S. at 396, 109 S.Ct. 1865 (internal citations and quotation
28 marks omitted). When the governmental interests at stake are substantial -- here

1 there were no governmental interests in Contreras wielding her nightstick against
2 plaintiff -- a greater intrusion upon the Fourth Amendment rights of the person
3 may be justified. Conversely, when the governmental interest is insubstantial --
4 which here is the case -- the application of even minimal force may be
5 unreasonable. When balancing the degree of force used against the governmental
6 interests, "it is the need for force which is at the heart of the
7 [analysis]." *Headwaters Forest Def. v. Cnty. of Humboldt ("Headwaters II")*, 276
8 F.3d 1125, 1130 (9th Cir.2002) (*quoting Liston v. Cnty. of Riverside*, 120 F.3d
9 965, 976 (9th Cir.1997)) (emphasis in original). *See also Headwaters Forest Def.*
10 *v. Cnty. of Humboldt ("Headwaters I")*, 211 F.3d 1121, 1133 (9th Cir.
11 2000) ("[W]here there is no need for force, *any* force used is constitutionally
12 unreasonable."); emphasis in original), *amended by*, 240 F.3d 1185, *cert. granted*,
13 *vacated and remanded*, 534 U.S. 801, 122 S.Ct. 24, 151 L.Ed.2d 1 (2001). *See*
14 *also P.B. v. Koch*, 96 F.3d 1298, 1303–04 & n. 4 (9th Cir.1996). Such here is the
15 case, because there was no need to use any force at all, and hence the use of force
16 was *eo ipso* unreasonable.

17 Also, Contreras' use of force may have violated the Fourteenth Amendment,
18 because "an unprovoked assault and battery by a [police officer]" violates
19 substantive due process. *Meredith v. State of Arizona*, 523 F.2d 481, 484 (9th Cir.
20 1975). *Mutatis mutandis*, an unprovoked assault and battery by a police officer,
21 occurred here, constitutes excessive, unreasonable force.

22 The Supreme Court subsequently held that allegations of excessive force
23 should be analyzed under a more specific constitutional provision, rather than
24 generalized notions of due process, if one is applicable. *Graham v. Connor*, 490
25 U.S. 386, 394, 109 S.Ct. 1865, 1870-71, 104 L.Ed.2d 443 (1989). "In most
26 instances, that will be either the Fourth Amendment's prohibition against
27 unreasonable seizures of the person, or the Eighth Amendment's ban on cruel and
28 unusual punishments, which are the two primary sources of constitutional

1 protection against physically abusive governmental conduct." *Ibid.*; see
2 also *Armendariz*, 75 F.3d at 1318-24. Thus, a convicted prisoner is protected from
3 excessive force by the Eighth Amendment and a citizen being arrested or
4 investigated is protected from excessive force by the Fourth
5 Amendment. *Graham*, 490 U.S. at 394, 109 S.Ct. at 1870-71.

6 Here, there was no need whatever for Contreras to strike plaintiff with her
7 nightstick. Therefore, Contreras striking plaintiff with her nightstick was an
8 instance of excessive force. See *Nehad v. Browder*, 929 F.3d 1125, 1132 (9th Cir.
9 2022) ("Whether a use of force was reasonable will depend on the facts of the
10 particular case, including, but not limited to, whether the suspect posed an
11 immediate threat to anyone, whether the suspect resisted or attempted to evade
12 arrest, and the severity of the crime at issue." (Citing *Graham v. Connor*, 490 U.S.
13 386, 396 (1989).). "The most important *Graham* factor is whether the suspect
14 posed an immediate threat to anyone's safety. *Mattos v. Agarano*, 661 F.3d 433,
15 441 (9th Cir. 2011) (en banc). Here, there was no threat to anyone's safety.

16 THE MALICIOUS PROSECUTION CLAIM.

17 By initiating a criminal prosecution of plaintiff without probable cause to do
18 so and with malice, which charge was dismissed, and which charge harmed
19 plaintiff by his having to endure it and spending two months in the county
20 jail, Contreras is liable for the malicious prosecution of plaintiff. *Thompson v.*
21 *Clark*, 596 U.S. 36 (2022). Contreras is liable under both the Fourth Amendment
22 and the Fourteenth Amendment Due Process Clause.

23 CONCLUSION

24 There are no genuine issues of material fact as to the excessive force claim
25 and the malicious prosecution claim, and therefore summary adjudication of those
26 two issues in plaintiff's favor is warranted. Rules 56(a) & (f)(1), Fed. R. Civ. P.
27
28

Partial summary judgment should be granted to plaintiff and against defendant Contreras on plaintiff's excessive force and malicious prosecution claims.

Respectfully submitted,

YAGMAN + REICHMANN

By: Stephen Yagman
STEPHEN YAGMAN

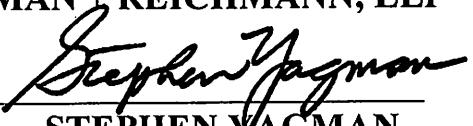
[View Details](#) | [Edit](#) | [Delete](#)

STEPHEN YAGMAN

1 **CERTIFICATE OF COMPLIANCE**
2 (L.R. 11-6.2)

3 The undersigned, counsel of record for plaintiff(s) certifies that this brief contains
4 976 words, which complies with the word limit of L.R. 11-6.1.

5 **YAGMAN + REICHMANN, LLP**

6 By: 

7 STEPHEN YAGMAN

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DECLARATION OF DAVID JACOBS

2 I, DAVID JACOBS, declare the following to be true under the penalty of
3 perjury at Venice Beach, California, pursuant to 28 U.S.C. § 1746, on the date set
4 forth below my signature hereinbelow.

5 1. I am the plaintiff in this action.

6 2. The following of the allegations in the operative complaint are true:

7 37. Then, most recently, on Sept. 2, 2024, defendants Contreras and Brown
8 accosted plaintiff with their nightsticks, who was asleep in his tent, at the corner of
9 Main Street and Westminster Avenue, and where he still lives, and has lived for
10 six years, used excessive force against plaintiff by battering him with nightsticks
11 while he was asleep in his tent, and then, after he alighted from his tent, pursued
12 him many blocks to the Venice Boardwalk (with an LAPD helicopter also in
13 pursuit, and arrested plaintiff, with no probable cause to do so.

14 38. Plaintiff was charged by Contreras and Brown with violation of
15 California Penal Code § 245(c), that provides as follows:

16 **245(c).** Any person who commits an assault with a deadly weapon or
17 instrument, other than a firearm, or by any means likely to produce great
18 bodily injury upon the person of a peace officer or firefighter, and who knows
19 or reasonably should know that the victim is a peace officer or firefighter
20 engaged in the performance of his or her duties, when the peace officer or
21 firefighter is engaged in the performance of his or her duties, shall be
22 punished by imprisonment in the state prison for three, four, or five years.

23 38. As a result of the making and pendency of this charge, plaintiff spent
24 from Sept. 2, 2024 to Oct. 23, 2024 in penal custody, until Oct. 23.

25 39. The charge against plaintiff was dismissed on Oct. 22, 2024, and
26 plaintiff was released.

40. All of plaintiff's belongings, including his clothing and his tent were lost as a result of what occurred.

3. During the above, Sept. 2, incident, Contreras jabbed me with her nightstick.

DAVID JACOBS

MAY 04 2025